Police Dep't v. Ridges

OATH Index No. 661/22, mem. dec. (Nov. 3, 2021)

Petitioner failed to establish its entitlement to retain vehicle where it failed to demonstrate that it fulfilled the dual notice requirement. Vehicle ordered released.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
POLICE DEPARTMENT
Petitioner
- against -
WILLIE RIDGES
Respondent

MEMORANDUM DECISION

JULIA H. LEE, *Administrative Law Judge*

Petitioner, the Police Department ("Petitioner," "NYPD," or the "Department"), brought this proceeding to determine its right to retain a vehicle seized as the alleged instrumentality of a crime pursuant to section 14-140 of the Administrative Code. Respondent Willie Ridges is the registered owner and driver of the seized vehicle (Pet. Ex. 5). This proceeding is mandated by *Krimstock v. Kelly*, 99 Civ. 12041, 2007 U.S. Dist. Lexis 82612, third amended order and judgment (S.D.N.Y. Sept. 27, 2007) (the "*Krimstock* Order"). *See generally Krimstock v. Kelly,* 306 F.3d 40 (2d Cir. 2002), *cert. denied,* 539 U.S. 969 (2003); *County of Nassau v. Canavan*, 1 N.Y.3d 134 (2003).

On September 26, 2021, petitioner seized respondent's vehicle, a 2008 Cherokee Jeep (Property Clerk Invoice No. 3001378457), following his arrest for a broken tail light, suspended driver's license, and criminal possession of a weapon in the third degree, a stun gun which was recovered during an inventory search of the vehicle (Pet. Exs. 3-4). Petitioner received respondent's demand for a retention hearing and scheduled the hearing for October 28, 2021, at this tribunal (Pet. Ex. 2).

At the proceeding on October 28, 2021, which was held remotely by videoconference due to the COVID-19 pandemic, petitioner relied on documentary evidence. Respondent,

represented by counsel, also presented documentary evidence and testified for the limited purpose to show that he did not receive notice and that the loss of his vehicle was a hardship. With respect to his pending criminal charges, respondent invoked the Fifth Amendment and offered no evidence.

For the reasons below, petitioner is ordered to release respondent's vehicle.

ANALYSIS

Petitioner seeks to retain the vehicle as the instrumentality of a crime. To prevail, it was required to prove by a preponderance of the evidence: (i) that probable cause existed for the arrest resulting in the vehicle's seizure; (ii) it is likely to prevail in a civil action for forfeiture of the vehicle; and (iii) that it is necessary that the vehicle remain impounded to ensure its availability for a judgment of forfeiture. *Krimstock* Order ¶ 3; *Canavan*, 1 N.Y.3d at 144-45. Due process requires an "initial testing of the merits of the City's case," not "exhaustive evidentiary battles that might threaten to duplicate the eventual forfeiture hearing." *Krimstock*, 306 F.3d at 69-70; *Canavan*, 1 N.Y.3d at 144 n.3. Thus, petitioner may rely on hearsay. *Krimstock* Order ¶ 3; *see also* 48 RCNY § 1-46 (Lexis 2021).

As a preliminary matter, respondent argued that petitioner failed to comply with the *Krimstock* Order's notice requirement, which specifies that:

> Notice of the right to a hearing will be provided at the time of seizure by attaching to the [Property Clerk's] voucher already provided to the person from whom a vehicle is seized a notice, in English and Spanish, as set forth below. A copy of which notice will also be sent by mail to the registered and/or titled owner of the vehicle within five business days after the seizure.

Krimstock Order ¶ 4. The *Krimstock* Order's imposition of a dual notice requirement is not "an empty formality." *Police Dep't v. Davis*, OATH Index No. 1297/15, mem. dec. at 2 (Dec. 26, 2014) (*citing Police Dep't v. Ruiz*, OATH Index No. 1440/07, mem. dec. at 3 (Mar. 27, 2007); *see also Police Dep't v. Carino*, OATH Index No. 541/12, mem. dec. at 2 (Oct. 6, 2011)). Rather, the notice requirement is designed "to afford car owners rapid, truncated, preliminary, administrative hearings concerning the retention of their vehicles by the police pending the outcome of a more plenary civil forfeiture action." *Police Dep't v. Williams*, OATH Index No. 1759/07, mem. dec. at 4 (Apr. 12, 2007). "When challenged, the Department must show that it

strictly complied with its notice obligations." *Police Dep't v. Brooks*, OATH Index No. 1745/13, mem. dec. at 2 (Mar. 29, 2013) (*citing Police Dep't v. Harris*, OATH Index No. 1607/13, mem. dec. at 3 (Mar. 14, 2013)). Failure to comply with the dual notice requirements requires return of the vehicle to the claimant. *See Police Dep't v. Coulanges*, OATH Index No. 2494/19, mem. dec. at 5 (June 14, 2019).

Respondent testified that he never received timely notice of his right to a retention hearing, in person or by mail. Instead, respondent claimed that at the time of his arrest, he was only given his driver's license receipt (Resp. Ex. A), informed that he had two weeks to fix his license, and told that he would get his vehicle back after his release from jail. Respondent testified that after his release, he immediately went to the precinct to retrieve his vehicle but was told that he would not be getting his car back and was not given any further explanation. He then contacted his criminal defense attorney who informed him that he needed the voucher for his vehicle in order to retrieve his car. He returned to the precinct on the next two consecutive days but was not successful in getting the voucher until he called his attorney from the precinct for assistance on the third day. Respondent further asserted that he first learned of his right to request a vehicle retention hearing from his attorney a few days after he received the vehicle voucher at the precinct. Petitioner's request for the retention hearing was received on October 14, 2021 (Pet. Ex. 2).

The Department contends that it served respondent with the notice by submitting its copy of the Vehicle Seizure Form prepared by Police Officer Wu, the arresting officer (Pet. Ex. 1). On the form, respondent's name and the make and model of the vehicle along with the vehicle identification number are handwritten while the defendant's signature is missing and the "defendant refused signature" box is checked (Pet. Ex. 1). According to the Department's counsel, this form is presumptive evidence that respondent was served with notice at the time of his arrest. The Department did not proffer any evidence to show that it fulfilled the dual notice requirement by mailing the notice within five days after the respondent's arrest and seizure of his vehicle.

We have long recognized that the *Krimstock* Order obligates the Department to provide notice by personal service at the time of the arrest and again by mail. *Police Dep't v. Munchez*, OATH Index No. 372/21, mem. dec. at 4 (Oct. 13, 2020) (petitioner failed to comply with notice requirement when there was only service by mail). The failure to comply with dual notice

requirement, alone, is a basis for ordering release of the vehicle. *See Police Dep't v. Edwards*, OATH Index No. 1575/13, mem. dec. at 3-4 (Mar. 19, 2013) (ordering release of vehicle where petitioner did not comply with dual notice requirement); *Police Dep't v. Blackwell*, OATH Index No. 164/13, mem. dec. at 6-7 (Aug. 21, 2012) (ordering release of vehicle where the Department did not personally serve notice at time of arrest); *Police Dep't v. Caban*, OATH Index No. 107/07, mem. dec. at 5 (July 14, 2006) (dual notice requirement, designed to provide actual notice and opportunity for a prompt hearing). Failure to comply with the notification requirement is prejudicial unless an owner's request for a hearing was scheduled within the earliest time allotted by the *Krimstock* Order. *See, e.g., Ruiz*, OATH 1440/07, mem. dec. at 3-4 (failure to send timely written notice to owner results in unneeded delay that *Krimstock* Order was designed to avoid); *cf. Police Dep't v. Stephenson*, OATH Index No. 2195/07, mem. dec. at 6 (June 14, 2007) (failure to mail written notice to vehicle's owner deemed harmless where original hearing held at earliest possible time, the tenth business day following the seizure). To hold otherwise, would eliminate the Department's incentive for providing timely notice.

I found respondent's testimony to be credible and supported by the actions he undertook to retrieve his vehicle. Respondent testified that he has cerebral palsy. Due to his condition, he walks with the assistance of crutches and relies on his vehicle which he is able to drive with a hand-controlled piece connected to the steering wheel allowing him to visit his family and conduct regular activities such as going to the laundromat. Respondent's urgent need to retrieve his specially equipped vehicle due to his condition is evident in the multiple trips to the precinct immediately after his release and seeking the assistance of his counsel when his trips to the precinct proved futile. Arguably, such actions would have been unnecessary had respondent been given timely and actual notice of his right to request a retention hearing. *See Coulanges*, OATH 2494/19, mem. dec. at 4 ("Respondent's efforts to locate and retrieve his vehicle supports his testimony that the Department failed to properly notify him of his right to a retention hearing at the time of his arrest as required under the *Krimstock* Order"); *Davis*, OATH 1297/15, mem. dec. at 4-5 (crediting respondent's actions to retrieve car to support a finding that he was not properly served with *Krimstock* notice).

Based upon a review of the evidence, I find that petitioner failed to adequately prove its compliance with the *Krimstock* dual notice requirement. Although this tribunal has found sufficient evidence of personal service based on documentary evidence, I find that respondent's

testimony supported by his actions were more persuasive than petitioner's documentary evidence and further supported by the Department's failure to proffer any evidence to show that respondent received the notice by mail within five business days of his arrest. *See Police Dep't v. Alvarenga*, OATH Index No. 1527/21, mem. dec. at 3-4 (Mar. 22, 2021) (finding lack of proper service of *Krimstock* notice based on unsupported vehicle seizure form); *Brooks*, OATH 1745/13, mem. dec. at 4 (crediting respondent's testimony over vehicle seizure form).

ORDER

The Department failed to comply with the dual notice requirements of the *Krimstock* Order. Accordingly, it is ordered to release respondent's vehicle.

Julia H. Lee
Administrative Law Judge

November 3, 2021

APPEARANCES:

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Attorney for Petitioner

THE LEGAL AID SOCIETY
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